Hospital and Service Employees Union, Service Employees International Union, AFL-CIO, Local 399 *and* Delta Air Lines, Inc. Case 31-CC-861

September 10, 1982

DECISION AND ORDER

On December 11, 1979, Administrative Law Judge Martin S. Bennett issued the attached Decision in this proceeding. Thereafter, Respondent and the General Counsel filed exceptions and supporting briefs, and Delta Air Lines filed cross-exceptions and a supporting brief.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings,[1] findings,[2] and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The Administrative Law Judge found that Respondent violated Section 8(b)(4)(ii)(B) of the Act by distributing handbills and by publishing portions of those handbills in union newspapers with an object of forcing Delta Airlines (herein Delta) to cease doing business with Statewide, the primary employer. The General Counsel, Delta, and Respondent filed exceptions to the Administrative Law Judge's factual findings; Respondent also excepted to the Administrative Law Judge's conclusions. For the reasons set forth below, we adopt the Administrative Law Judge's conclusions.

The parties stipulated to the essential facts in this case before the hearing. From July 1, 1975, to December 16, 1976, Delta subcontracted to National Cleaning Company (herein National) the janitorial work for its administrative offices at the Los Angeles International Airport (herein LAX). National, which is a party to a collective-bargaining agreement with Respondent, employed six members of Respondent to perform Delta's janitorial work. On December 16, 1976, Delta lawfully terminated its subcontract with National and began contracting out the janitorial work to Statewide, a nonunion employer. As a result, National was forced to lay off five of the six employees working at Delta, transferring one employee to another job. The parties stipulated that thereafter Respondent had a primary labor dispute with Statewide and no primary dispute with Delta.

On September 23, 1977,[3] in furtherance of its primary dispute with Statewide, Respondent began distributing handbills at Delta's LAX facility and in front of Delta's downtown Los Angeles ticket office; it published portions of those handbills in union newspapers. Specifically, four handbills were distributed at these locations, referred to herein as Handbills A, B, C, and D.[4]

Handbill A, distributed from September 23 to October 3, consisted of two sides; one side read, "Please do not fly Delta Airlines. Delta Airlines Unfair, Does not provide AFL-CIO conditions of employment"; the other side, set forth in full in the Administrative Law Judge's Decision, stated, "It takes more than money to fly Delta. It takes nerve," and included information taken from the National Transportation Board (NTB) and the Civil Aeronautics Board (CAB) pertaining to Delta's accident and consumer complaint record. Respondent voluntarily withdrew Handbill A on October 3.

Handbill B, distributed from October 6 to October 12, contained the identical information as that contained on side 2 of Handbill A (Delta's NTB and CAB record) except it omitted the CAB statistics pertaining to consumer complaints. Respondent voluntarily withdrew this handbill on October 12.

Handbill C, distributed from October 13 to December 28,[5] consisted of two sides; side 1 urged the public to boycott Delta because Delta caused members of Respondent to become unemployed and subcontracted with a "maintenance company" which does not provide union wages and benefits; the other side listed the identical accident and complaint information as that contained on side 2 of Handbill A.

Finally, Handbill D, distributed from January 3 to March 1, 1978,[6] was almost identical to Handbill C, except on side 1 it identified the "maintenance company" as Statewide, and on side 2, before listing the NTB and CAB information, it included an introductory statement advising the public that it was bringing the statistical information to their attention in furtherance of its primary dispute with Statewide.

Simultaneous with the handbilling, Respondent published copies of Handbills A and C in two

[1] On March 13, 1979, the Board remanded this case to the Regional Director for a hearing on all issues since the parties' briefs raised issues outside the stipulation of facts. When this case was heard before the Administrative Law Judge, the parties merely submitted into evidence their stipulation of facts and a short addendum to it.

[2] The General Counsel excepts to the Administrative Law Judge's inadvertent failure to make jurisdictional findings of fact on Statewide Maintenance Corporation (herein called Statewide). Since the parties' stipulation fully sets forth the facts necessary for making such a finding, we hereby find that Statewide is a person engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act.

[3] All dates are 1977, unless otherwise stated.

[4] The sides of Handbills A, C, and D, which the Administrative Law Judge failed to include in his Decision, are set forth in full in Appendixes I, II, III [omitted from publication.]

[5] Although the stipulation states that Handbill C was distributed "to date," Respondent contends in its brief that it was voluntarily withdrawn on December 28, 1977.

[6] Although the stipulation states only that Handbill D was distributed "to date," both the General Counsel and Respondent stated in their briefs that on March 1, 1978, the United States District Court for the Central District of California temporarily enjoined it.

union newspapers, the Service Union Reporter (SUR) and the Service Union Reporter, Political Action Report (SURPAR). Specifically, Respondent published Handbill A in the September edition of SUR and SURPAR, and Handbill C in the October edition of these two newspapers and the December edition of SURPAR. Respondent also published in the September edition of SUR and the October edition of SURPAR, a block advertisement which stated, "Do Not Fly Delta." The parties stipulated that these block advertisements were published in conjunction with the publication of Handbills A and C, and we will therefore treat them as extensions of those handbills.

The Administrative Law Judge found that Respondent's handbilling and advertisements were unlawful under Section 8(b)(4) because the inclusion of the NTB and CAB information on the handbills and advertisements was misleadingly unrelated to any dispute with Delta and "highly coercive" of Delta and therefore removed the handbills from the protection of the publicity proviso. Respondent excepts, contending that (1) Handbills A, B, and C were voluntarily withdrawn and therefore should not be considered by the Board; (2) Handbill D satisfies the conditions of the publicity proviso because it identifies the primary dispute and includes only "truthful" information,[7] and (3) if the inclusion of the NTB and CAB information on Delta causes the handbill to lose the protection of the proviso, it is nevertheless protected by the first amendment to the Constitution and thus cannot be found unlawful. For the reasons set forth below, we find Respondent's exceptions lacking in merit.

Section 8(b)(4) makes it unlawful for a union to threaten, coerce, or restrain a secondary employer with an object of forcing or requiring that secondary employer to cease doing business with any other person. Here Respondent's handbilling and advertisements, urging a total consumer boycott of Delta, the secondary, were designed to bring economic pressure on Delta for the purpose of forcing Delta to cease doing business with Statewide, the primary. Thus, we find that Respondent's conduct falls within the proscription of Section 8(b)(4). Indeed, we note that Respondent apparently so concedes because it argues only that its conduct is protected by either the publicity proviso or the first amendment, and not that it is noncoercive or for a lawful primary purpose.

The publicity proviso exempts from the proscription of Section 8(b)(4) all:

> . . . publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution.

The parties stipulated that Respondent's conduct did not cause any employees of Delta or any other person to cease performing services; thus, the only issue is whether the handbills were for the "purpose of truthfully advising the public" within the meaning of the proviso.

It is clear from the express language of the proviso that at the very least the proviso requires publicity to advise the public of the nature of the primary dispute and the secondary employer's relationship to it. Indeed, Respondent in its brief endorses this reading of the proviso. Yet, although Respondent's Handbills C and D make reference to the primary dispute and Delta's relationship to it, Handbills A and B fail to mention Statewide at all. In fact, the only employer referred to in Handbills A and B is Delta. Thus, we find that Handbills A and B, by failing to identify the primary dispute, were not "for the purpose of truthfully advising the public" within the meaning of the proviso, and that their distribution therefore violated Section 8(b)(4)(ii)(B) of the Act. As noted above, the Administrative Law Judge treated all four handbills the same and found they were not protected by the proviso because they included the "misleadingly unrelated" and "highly coercive" NTB and CAB information on Delta. To the extent that we rely on a different rationale for finding Handbills A and B unprotected, we reject the Administrative Law Judge's discussion as it pertains to these two handbills.

Contrary to Handbills A and B, Handbills C and D identify the nature of the primary dispute, but they also include the NTB and CAB information which pertains only to Delta, the secondary employer, and is totally unrelated to Delta's connection with Respondent's primary labor dispute. It is clear from the circumstances that Respondent included this statistical information in its handbills

[7] Respondent states in its brief that no one contends the NTB and CAB information is untrue. Delta argues, however, that the NTB and CAB information published alone is misleading because it tends to imply that Delta is not among the safest airlines in the industry, which it contends it is. However, Delta has the burden of showing that the information is misleading, and failed to present any evidence on this issue. Accordingly, we shall only decide this case on the assumption that the NTB and CAB information is factually accurate.

solely to bring economic pressure upon Delta for the purpose of forcing Delta to cease doing business with Statewide, and not because of an independent dispute with Delta over Delta's safety record. Indeed, Respondent expressly admits its secondary object for publishing this information when it states on side 2 of Handbill D that it is bringing this information to the public's attention in order to "publicize its primary [labor] dispute with Statewide."[8] Thus, it is clear, and we find, that the publishing of the NTB and CAB information constitutes threats, restraint, or coercion for an unlawful secondary purpose within the meaning of Section 8(b)(4)(ii)(B) of the Act.

The remaining question is whether the proviso protects Handbills C and D, which identify the primary dispute on one side, but include the unrelated NTB and CAB information on the other side to further coerce Delta to cease subcontracting with Statewide. For the reasons set forth below, we find that the proviso does not protect such publicity.

As noted above, the proviso states that nothing in Section 8(b)(4) shall be construed to prohibit "publicity, other than picketing, for the purpose of truthfully advising the public" of the nature of the primary labor dispute. The express language of this "for the purpose" phrase, we believe, requires that *all* coercive information that is contained in publicity must be included for the purpose of truthfully advising the public of the nature of the primary dispute. Information that attacks a secondary employer for reasons unrelated to that employer's role in the primary dispute is not the type of information the proviso was addressing. This reading of the proviso not only accords with the plain meaning of the "for the purpose" phrase, but also conforms to Congress' purpose in enacting Section 8(b)(4).[9] For, we note that Section 8(b)(4) was enacted primarily because Congress believed that neutral (secondary) employers should be protected from becoming involved in labor disputes not their own—and similarly that a union's ability to enmesh neutrals in other employers' labor disputes should be limited as much as possible.[10] By interpreting the proviso to require that all coercive information on handbills be for the purpose of truthfully advising the public of the nature of the primary dispute, and thereby prohibiting a union from attacking a secondary employer on grounds totally unrelated to the primary dispute, we believe we are advancing the congressional objective of insulating secondary employers.[11] Indeed, a contrary interpretation of the proviso's "for the purpose" phrase would, in fact, extend the permissive area of secondary activity, in direct contradiction to Congress' purpose in enacting and later amending Section 8(b)(4).

Here, since the NTB and CAB information on Respondent's handbills pertains only to Delta and is totally unrelated to Delta's connection with Respondent's primary labor dispute, it cannot be said that Respondent included the statistical information in its handbills "for the purpose of truthfully advising the public" of the nature of its primary dispute with Statewide. In fact, the inclusion of this statistical information tends to be misleading as to the nature of Respondent's primary dispute, for it implies that, in addition to its dispute with Statewide, Respondent has an independent dispute with Delta over Delta's flying record; yet, the circumstances show, and Respondent admits, that Respondent's *only* dispute with Delta is over Delta's decision to subcontract with Statewide.[12] Accordingly, we

[8] We note that this case would be entirely different if the NTB and CAB information on Delta was published on the handbills because Respondent had a primary dispute with Delta over Delta's accident record and wanted to force Delta to improve the safeness of its airplanes. Then, Respondent would be publishing the information for a primary object and the proscriptions of Sec. 8(b)(4) would not apply. However, as noted above, it admits that it published that information for a secondary purpose.

[9] We agree with Member Jenkins' analysis of the "for the purpose" language of the publicity proviso and his discussion of the legislative history of the proviso as set forth in his separate opinion.

[10] *Wadsworth Building Company*, 81 NLRB 802 (1949); *Cement Masons Union Local 337 (California Association of Employers)*, 190 NLRB 261 (1971), enfd. 468 F.2d 1187 (9th Cir. 1972).

[11] We wish to emphasize that had Respondent's handbills contained noncoercive information which was unrelated to the primary dispute, the inclusion of the noncoercive matter would not in and of itself remove the handbills from the protection of the proviso. Under our interpretation of the statute, publicity, whether related to the primary dispute or not, which does not threaten, restrain, or coerce any person engaged in commerce is not violative of Sec. 8(b)(4)(ii) and therefore need not depend on the publicity proviso for protection.

[12] In this connection, we note that the public might believe that, since the NTB and CAB information pertains only to Delta, Respondent was urging a boycott of Delta for two purposes—(1) to force Delta to cease doing business with Statewide, and (2) to force Delta to improve its "poor" flying record—when in fact only the former object was being sought.

Our concern with the misleading effect produced by Respondent's inclusion of the NTB and CAB information in its handbills is similar to that expressed by the Board and the Supreme Court in *N.L.R.B.* v. *Local Union No. 1229, International Brotherhood of Electrical Workers [Jefferson Standard Broadcasting Company]*, 346 U.S. 464 (1953). In that case, technicians employed by a radio and television station picketed the station during contract negotiations to protest the company's refusal to agree to arbitration for discharges. After 6 weeks of picketing, several technicians distributed a handbill bearing the signature "WBT Technicians" which attacked the quality of the company's product and its business policies. The company discharged 10 technicians for sponsoring or distributing the handbill. The Board found that nine of the discharged employees had sponsored or distributed the handbill, and that in doing so they had failed to disclose their ultimate purpose—"to extract a concession from the employer with respect to the terms of their employment"—and instead "purported to speak as experts, in the interest of consumers and the public at large." *Jefferson Standard Broadcasting Company*, 94 NLRB 1507, 1511 (1951). The Board found the handbill's subject matter unrelated to the technicians' employment relationship and therefore unprotected under Sec. 7 of the Act. The Supreme Court agreed, finding that the ex-

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find that Handbills C and D by containing the coercive and unrelated NTB and CAB information were not "for the purpose of truthfully advising the public" within the meaning of the publicity proviso as interpreted above, and, therefore, Respondent's distribution of these handbills violated Section 8(b)(4)(ii)(B) of the Act.[13]

For the same reasons that we find the distribution of Handbills A and C violative of Section 8(b)(4)(ii)(B), we also find the publication of these handbills in the union newspapers violative of that section.[14]

Respondent further contends that if the handbilling and advertisements are not privileged under the proviso, they are nevertheless protected by the first amendment to the Constitution and thus cannot be found unlawful by the Board. We have consistently taken the position that, as an administrative agency created by Congress, we will presume the constitutionality of the Act we are charged with administering, absent binding court decisions to the contrary.[15] Since we have found that Respondent's conduct is unlawful under Section 8(b)(4) because it is coercive and engaged in for a secondary object, and is not saved by the publicity proviso, we shall presume that our finding of a violation here is in accordance with the Constitution and Congress' intent to outlaw secondary boycotts.[16]

AMENDED CONCLUSIONS OF LAW

Based on the foregoing, the Board adopts the Administrative Law Judge's Conclusions of Law, as modified below:

Substitute the following for Conclusions of Law 3:

"3. Respondent, by handbilling the terminal and ticket offices of Delta and by advertising in the Service Union Reporter and the Service Union Re-

istence of a labor dispute did not justify the technicians' attack on the company's product and policies. In particular, the Court noted that:

> In contrast to their claims on the picket line as to the labor controversy, their handbill of August 24 omitted all reference to it. The handbill diverted attention from the labor controversy. It attacked public policies of the company which had no discernible relation to that controversy. The only connection between the handbill and the labor controversy was an ultimate and undisclosed purpose or motive on the part of some of the sponsors that, by the hoped-for financial pressure, the attack might extract from the company some future concession. [346 U.S. at 476–477.]

While *Local Union No. 1229* involved the application of Sec. 7, we find its analysis relevant in that the technicians' handbill was deemed to be unprotected in the absence of a nexus between the source of the labor dispute and the subject matter of the technicians' appeal to the public.

[13] Since Chairman Van de Water and Member Hunter agree that the distribution of Handbill C violated Sec. 8(b)(4)(ii)(B) because it contained the coercive and unrelated NTB and CAB information, they find it unnecessary either to consider whether that handbill also failed to sufficiently identify the primary dispute or to pass on the Board's holdings in *Florida Gulf Coast Building Trades Council, AFL–CIO (The Edward J. DeBartolo Corporation)*, 252 NLRB 702 (1980), enfd. 662 F.2d 264 (4th Cir. 1981), or *K-Mart Corporation*, 257 NLRB 86 (1981).

[14] We believe that Member Jenkins, in finding the publication of Handbills A and C to be lawful, relies on an inconsistent application of Sec. 8(b)(4)(ii)(B) and a strained analogy to lawful secondary consumer picketing. As stated earlier, a union violates Sec. 8(b)(4)(ii)(B) by engaging in conduct which threatens, coerces, or restrains a secondary employer with an object of forcing or requiring the secondary employer to cease doing business with any other person. Member Jenkins joins us in finding that the distribution of Handbills A and C to the public at Delta's facilities was coercive. He also admits that Respondent's publication of the handbills in its newspapers was for a proscribed object, but maintains that such publication did not threaten, coerce, or restrain Delta within the meaning of Sec. 8(b)(4)(ii)(B). We fail to see why the message contained in the unlawfully distributed handbills should be treated any differently when disseminated in the form of advertisements in Respondent's newspapers.

Under Sec. 8(b)(4)(ii)(B), a union engages in coercion when it imposes economic pressure against a secondary employer that is designed to inflict injury on the secondary employer's business. As part of its urging of a total consumer boycott of Delta, Respondent published Handbills A and C which contain the unmistakable message to potential customers that they should be concerned for their safety in light of Delta's accident record. Viewed in the context of the nature of Delta's business and the serious consequences commonly associated with aircraft accidents, the effect of Respondent's appeal in this newspaper advertisement was clearly to coerce Delta.

Respondent's publication of the information contained in Handbills A and C is precisely the type of secondary activity which Congress intended to prohibit under Sec. 8(b)(4)(ii)(B). The newspaper advertisements are part of Respondent's effort to institute a total consumer boycott designed to cut off Delta's business and force it to cease dealing with, or put pressure on, Statewide. The publication of Handbills A and C bears little resemblance to the secondary consumer picketing found to be lawful in *N.L.R.B. v. Fruit and Vegetable Packers & Warehousemen, Local 760, and Joint Council No. 28 of IBT [Tree Fruits Labor Relations Committee Inc.]*, 377 U.S. 58 (1964). The Supreme Court's holding in *Tree Fruits* that consumer picketing limited to the struck product did not violate Sec. 8(b)(4)(ii)(B) was based on the close relationship between the union's appeal and the primary dispute. As published in Respondent's newspapers, Handbill A fails to mention Statewide at all, and Handbill C makes an appeal to boycott Delta for reasons unrelated to Delta's connection with the primary dispute. Thus, it can hardly be said that the appeal embodied in the advertisements is "closely confined to the primary dispute." *Id.* at 72.

Member Jenkins states that Respondent's publication of its boycott appeal in its own newspapers results in a trivial impact on the neutral's business and does not materially expand the scope of the primary dispute. This view appears to be based on the belief that the union newspapers reach a limited audience and therefore are not likely to result in injury to the neutral. We find this view to be contrary to both the statute and reality. At issue is a union's appeal for public assistance in forcing the secondary employer to cooperate with the union in its primary dispute. Part of that public appeal appears in advertisements in the union's newspapers. The publicity proviso expressly provides that for the purposes of Sec. 8(b)(4) the term "public" includes members of a labor organization. Further, by publishing Handbills A and C and carrying its appeal to boycott Delta to a broader segment of the public, Respondent clearly expanded the scope of the primary dispute. Since the effect of the newspaper advertisements is to enmesh Delta in the primary dispute between Respondent and Statewide, we find that Respondent's publication of Handbills A and C coerced Delta within the meaning of Sec. 8(b)(4)(ii)(B).

[15] *American Federation of Television and Radio Artists, etc. (Great Western Broadcasting Corporation d/b/a KXTV)*, 150 NLRB 467 (1964); *Pet, Incorporated*, 244 NLRB 96 (1979). Although, as Respondent notes, in *Pet, Incorporated* the Board stated that it would reach the first amendment issue if it found the respondent union's conduct was not protected by the publicity proviso, in that case the Board had not passed on whether the respondent union's conduct was coercive under Sec. 8(b)(4). Here, we have found Respondent's conduct unlawful under Sec. 8(b)(4) and not protected by the proviso. Thus, based on our policy as stated above, we shall presume that the finding that Respondent's conduct violates Sec. 8(b)(4) accords with the Constitution.

[16] Although we thus find it unnecessary here to reach or pass upon whether Respondent's conduct is protected by the first amendment to the Constitution, we expressly reject the Administrative Law Judge's handling of this first amendment issue.

porter, Political Action Report with handbills (as described herein) and advertisements that contain information directed solely at Delta Air Lines, Inc., and totally unrelated to that employer's connection with Respondent's primary labor dispute with Statewide, where an object thereof is to force or require Delta Air Lines to cease doing business with Statewide Maintenance Corporation, violated Section 8(b)(4)(ii)(B) of the Act."

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified and set out in full below, and hereby orders that the Respondent, Hospital and Service Employees Union, Service Employees International Union, AFL-CIO, Local 399, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Distributing handbills and publishing advertisements which contain information directed solely at Delta Air Lines, Inc., and totally unrelated to that employer's connection with Respondent's primary labor dispute with Statewide Maintenance Corporation, where an object is to force or require Delta Air Lines, Inc., to cease doing business with Statewide Maintenance Corporation.

(b) In any like or related manner threatening, restraining, or coercing Delta Air Lines, Inc., or any other person engaged in commerce where an object thereof is to force or require Delta Air Lines, Inc., or any other person to cease doing business with Statewide Maintenance Corporation.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Post at its offices and meeting places and publish in Service Union Reporter and Service Union Reporter, Political Action Report attached copies of the notice marked "Appendix IV."[17] Copies of said notice, on forms provided by the Regional Director for Region 31, after being duly signed by Respondent's representative, shall be posted and published by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Sign and mail sufficient copies of said notice to the Regional Director for Region 31 for posting by Delta Air Lines, Inc., the latter willing, at all places where notices to its employees are customarily posted.

(c) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

MEMBER JENKINS, concurring in part and dissenting in part:

The case before us presents difficult, but important, issues to be resolved concerning the secondary boycott provisions of the Act. Because my views do not correspond entirely with those of my colleagues, I have decided that a separate statement of my position is necessary.

Our inquiry is directed first to a resolution as to whether the various acts of handbilling engaged in by the Union and discussed, *infra*, are proscribed by Section 8(b)(4)(ii)(B) of the Act. Second, we are asked to determine whether or not the dissemination in the Union's newspaper of the information contained in the handbills is violative of the Act. In the following paragraphs, I have attempted to explain the reasons for my conclusions as to each of these issues and to discuss whatever differences I perceive to exist between myself and my colleagues.

A. *The Handbilling*

On December 16, 1977, Delta Airlines lawfully terminated its janitorial service subcontract with National Cleaning Company (herein called National) and subcontracted the janitorial work for its Los Angeles Airport facilities with Statewide Maintenance Corporation (herein called Statewide). National had a collective-bargaining agreement with Respondent; Statewide did not. As a result of Delta's termination of its subcontract with National and its assumption of a subcontract with Statewide, a number of Respondent's members, employed by National, were laid off.[18] Respondent therefore has a primary labor dispute with Statewide. Its dispute with Delta is secondary in nature.

From September 23, 1977, to March 1, 1978, Respondent distributed handbills at Delta's Los Angeles Airport facilities and its downtown Los Angeles ticket office urging the public not to fly Delta Airlines. Four different handbills were distributed. The first two handbills failed to identify the primary

[17] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[18] Five of National's six employees were laid off when Statewide commenced operations at Delta's Los Angeles Airport facilities. A sixth National employee was transferred. All six employees were members of Respondent Union.

dispute and made no mention of any employer other than Delta. These handbills failed to identify adequately the primary labor dispute and thus failed to meet the requirements for protection under the publicity proviso of Section 8(b)(4)(ii)(B).[19] Because they urged a secondary boycott by coercive means, these handbills violated the Act. My colleagues and I are in agreement as to the result reached on these two handbills.

The treatment of the third and fourth handbills presents more of a problem, since they meet the requirement of identifying the primary dispute. However, in addition to a statement of the nature of its primary dispute with Statewide and a request that the public not fly Delta Airlines, both handbills make reference to Delta's alleged accident record. The handbills contain the following statement: "Let's Look at the Accident Record." Below this statement the handbill lists what purported to be Delta's accident record from January 13, 1963, to May 27, 1976, and the number of consumer complaints Delta had received from July 1976 to July 1977. Respondent maintains, and Delta has not shown otherwise, that this information is truthful and was lawfully obtained from the public records of the United States Civil Aeronautics Board and National Transportation Board. We are thus presented with the question whether a handbill, which otherwise meets all the requirements for protection under the publicity proviso of Section 8(b)(4)(ii)(B), is proscribed when it includes additional information which is meant to injure the secondary employer and is not conceivably related to the primary labor dispute.

Contrary to the arguments of my colleague, Member Zimmerman, I conclude that the inclusion of the additional and unrelated information removes the third and fourth handbills from the shelter of the publicity proviso. In reaching this conclusion, I do not believe, as Member Zimmerman insists, that I have misconstrued the proviso, misread the legislative history, misapplied precedent, or ignored constitutional issues. Rather, I believe that a serious and thorough examination of the relevant authority fairly compels the conclusion that the handbills at issue in this case are not protected by the publicity proviso.

Our initial focus must be the specific language of Section 8(b)(4)(ii)(B) and, particularly, its second proviso:

> 8(b) It shall be an unfair labor practice for a labor organization or its agents—
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> (4) . . . (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:
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> (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9:
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> . . . *Provided further*, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution. . . .

The statute first prohibits coercive conduct (Sec. 8(b)(4)(ii)), undertaken with secondary objectives (Sec. 8(b)(4)(ii)(B)). The statute, in its "publicity proviso," then exempts a class of activities, which would otherwise be prohibited, from the reach of the proscription. No member of this Board would hold that the third and fourth handbills do not fall within the general proscription of Section 8(b)(4)(ii)(B); if the handbills are protected, therefore, they must fall within the language of the publicity proviso. In other words, the third and fourth handbills must be "publicity, other than picketing, for the purpose of truthfully advising the public . . . that a product or products are produced by an employer with whom the labor organization has a

[19] *Honolulu Typographical Union No. 37, AFL-CIO (Hawaii Press Newspapers, Inc.)*, 167 NLRB 1030 (1967).

primary dispute and are distributed by another employer."

The third and fourth handbills are clearly "publicity, other than picketing." They are also, we must assume, truthful. However, it is equally clear that the Delta's accident and consumer complaint record, was not presented *"for the purpose of . . . advising the public . . . that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer."*

Member Zimmerman would not read "for the purpose of" in the statute as stating a requirement for protection under the publicity proviso. In doing so, however, he is forced to endorse a fragmentary and internally inconsistent construction of the proviso's language. It is an elementary canon of statutory interpretation that each word in a statute will be presumed to be meaningful and to have been purposely included.[20] Thus, the Board has held that the statutory language "publicity . . . for the purpose of truthfully advising the public" imposes a requirement that the publicity be truthful.[21] Similarly, we have held that the statutory language "advising . . . that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer" imposes a requirement that the union clearly identify the nature of its primary labor dispute and must precisely identify the primary employer.[22] Indeed, it is on the basis of this requirement that we hold, with Member Zimmerman's concurrence, that Respondent's first two handbills fall outside the proviso's protection.

It would surely be incongruous not to read the words "publicity . . . for the purpose of" as similarly stating a requirement for inclusion within the proviso; specifically, imposing a requirement that the publicity be presented for the purpose of advising that a product is produced by an employer with which a union has a labor dispute and is distributed by another employer. Since the handbills distributed by Respondent contained information which was not presented for this protected purpose, but instead presented solely for the purpose of undermining the public's confidence in Delta due to practices which are not conceivably connected to Delta's relationship to the primary labor dispute, the handbills do not meet this requirement for protection which the language of the proviso imposes.

Where the meaning of a statute is clear on its face, as is the case with the "for the purpose of" requirement of the publicity proviso, there is no need to resort to an analysis of the legislative history.[23] However, because my colleague, Member Zimmerman, relies so heavily on the legislative history of the publicity proviso as support for his view that Respondent's third and fourth handbills are protected, a closer examination of that legislative history is desirable.

The legislative history of the publicity proviso is indeed "limited," as Member Zimmerman admits. Nevertheless, it is not quite as limited as he implies. Member Zimmerman cites two remarks of Senator John F. Kennedy, chairman of the Conference Committee established to resolve differences between the House and Senate versions of the Labor-Management Reporting and Disclosure Act of 1959. In the first of these remarks, Senator Kennedy states that the original House bill[24] would have interfered with freedom of speech by preventing labor organizations from appealing to the general public for assistance in a labor dispute.[25] In the second statement quoted by Member Zimmerman, Senator Kennedy notes that the compromise bill, which included the publicity proviso, permits unions "to conduct informational activity short of picketing" and allows unions to "carry on *all publicity* short of having ambulatory picketing in front of a secondary site [emphasis supplied]."[26]

Initially, it is obvious that our holding regarding Respondent's handbilling does not prevent unions from appealing to the general public for assistance in a labor dispute. We hold merely that such appeals must conform to the requirements of the publicity proviso, as we have held many times in the past.[27] Secondly, while Senator Kennedy's remark that unions may carry on "all publicity" short of picketing might, standing alone, tend to support Member Zimmerman's interpretation of the publicity proviso, it does not, in fact, stand alone. It stands with the language of the proviso itself, which plainly does not permit unions to carry on "all publicity." Instead, as the Board has consistently held, the proviso allows unions to carry on only publicity which meets all the requirements

[20] *United States* v. *Menasche*, 348 U.S. 528, 538-539 (1955); Sands, 2A Statutes and Statutory Interpretation 63 (1973).

[21] *United Steelworkers of America, AFL-CIO-CLC (Pet Incorporated)*, 244 NLRB 96 (1979), enforcement denied on other grounds 641 F.2d 545 (8th Cir. 1981); *Local 248, Meat & Allied Food Workers, a/w Meatcutters (Service Food Stores, Inc.)*, 230 NLRB 189 (1977); *Plumbers, Steamfitters, & Pipefitters Local No. 155 (The Kroger Co.)*, 195 NLRB 900 (1972); *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, etc., Local 537 (Jack M. Lohman, d/b/a Lohman Sales Company)*, 132 NLRB 901 (1961).

[22] See fn. 19, *supra*.

[23] *Packard Motor Car Co.* v. *N.L.R.B.*, 330 U.S. 485, 492 (1947); *Caminetti* v. *United States*, 242 U.S. 470, 485 (1917); Sands, 2A Statutes and Statutory Construction 4, 48 (1973).

[24] The Landrum-Griffin bill, HR 8400.

[25] 105 Cong. Rec. 16591; II Leg. Hist. 1708 (LMRDA, 1959).

[26] 105 Cong. Rec. 17898-17899; II Leg. Hist. 1432.

[27] See fns. 19, 21, and 22, *supra*.

which the proviso sets forth. The logic of Member Zimmerman's interpretation of the legislative history reads out of the proviso *all* requirements for inclusion, including, of course, those requirements, such as truthfulness and the identification of the primary employer, which Member Zimmerman acknowledges to be mandated by the clear language of the proviso.

There is, in addition, another remark by Senator Kennedy which sheds more light on Congress' intent in adding the publicity proviso to the original House version of Section 8(b)(4). In addressing the Senate on the results of the Conference Committee, Senator Kennedy noted that:

> [T]he House bill prohibited the union from carrying on any kind of activity to disseminate informational material to secondary sites. *They could not say that there was a strike in a primary plant.*
>
> We quite obviously are opposed to their affecting liberties in a secondary strike or affecting employees joining, but the House language prohibited not only secondary picketing, but even the handing out of handbills or even taking out an advertisement in a newspaper.
>
> Under the language of the conference, we agreed there would not be picketing at a secondary site. What was permitted was the giving out of handbills or information through the radio, and so forth. [Emphasis supplied.][28]

As with the statements quoted by Member Zimmerman, the above remark does not mention *any* restriction on the nonpicketing publicity of a union at a secondary site. Since the proviso plainly does impose *some* restrictions, Senator Kennedy's statement cannot reasonably be read as support for refusing to give effect to one of those restrictions, while giving effect to the others. Senator Kennedy's above-quoted remark does indicate, however, that the Senate was primarily concerned that the language of the House bill would prevent unions from publicizing the fact that there was a strike in a primary plant. As Senator Kennedy informed the Senate, this concern lead to the inclusion of the publicity proviso. Our reading of the proviso fully appreciates this concern and does not, in any manner, prevent a union from distributing truthful information concerning the primary labor dispute and its relation to the neutral business.

I believe that Member Zimmerman's fears of constitutional conflict are unnecessary. Our conclusion that Respondent's handbilling constitutes an unfair labor practice does not lead us into conflict with the first amendment. In numerous cases, the Supreme Court has determined that a union's speech may be restricted under the Act, where the restriction is carefully tailored to prevent the unlawful coercion of neutral businesses and employees.[29] Moreover, I can see no substantive constitutional difference between our holding that Respondent's third and fourth handbills violate the statute because they fail to meet the "for the purpose of" requirement of the publicity proviso, and our holding, which Member Zimmerman joins, that Respondent's first two handbills violate the statute because they fail to meet the proviso's requirement that the primary labor dispute clearly be identified. In either case, union speech is restricted; in either case, it is restricted because the statutory requirements for protection under the proviso are not met. And, in either case, the restriction on union speech is necessary to implement the congressional objective of preventing economic injury to neutrals in labor disputes which are not of their own making.

The Board has established a sound policy of assuming the constitutionality of the Act which the Board was created to enforce.[30] Member Zimmerman's doubts, which I do not share, concerning the constitutionality of our holding regarding Respondent's third and fourth handbills, are best resolved in the more appropriate forum of the Federal courts, at least where the clear language of the Act requires, as in this case, a single interpretation.

I conclude, therefore, that Respondent's third and fourth handbills, by failing to meet the "for the purpose of" requirement of the publicity proviso, are not exempted from the prohibition of coercive secondary boycott activity under Section 8(b)(4)(ii)(B) and their distribution constitutes an unfair labor practice under that statute.

B. *The Newspaper Publications*

We turn now to the question whether the Union's publication in its own newspapers[31] of the request to boycott Delta, coupled with publication of Delta's purported accident and consumer complaint record, violates Section 8(b)(4)(ii)(B) of the Act. As noted above, I conclude that it does not.

[28] 105 Cong. Rec. 16254; II Leg. Hist. 1388-89 (LMRDA, 1959).

[29] See, e.g., *N.L.R.B.* v. *Retail Store Employees Union, Local 1001, Retail Clerks [Safeco Title Insurance Co.]*, 447 U.S. 607 (1980); *American Radio Assn.* v. *Mobile Steamship Assn.*, 419 U.S. 215 (1974); *International Brotherhood of Electrical Workers, et al. [Giorgi Construction Co.]* v. *N.L.R.B.*, 341 U.S. 694 (1961); *Bakery Drivers Local* v. *Wohl*, 315 U.S. 769, 776-778 (1942) (Douglas, J., concurring).

[30] *Pet Incorporated, supra; American Federation of Television and Radio Artists, San Francisco Local, et al. (Great Western Broadcasting Corporation, d/b/a KXTV)*, 150 NLRB 467 (1964).

[31] The statements at issue in this case were published in the Service Union Reporter and the Service Union Reporter, Political Action Report, publications of the California State Council of Service Employees, the Eastern Journal, a publication of the Eastern Conference of Service Employee Unions, and the New York State Service Employee, published by the New York State Service Employees Council.

For the Board to find that a union's conduct is an unfair labor practice under Section 8(b)(4)(ii)(B), we must find that the challenged conduct was engaged in for the purpose of forcing or requiring a neutral business to cease dealing with another business *and* that the union pursued this objective by threatening, coercing, or restraining the neutral business. While the publication in Respondent's newspapers of Delta's accident and consumer complaint record, along with the admonition to boycott Delta, was clearly part of Respondent's effort to force Delta to cease doing business with Statewide, it did not "threaten, coerce, or restrain" Delta within the meaning of Section 8(b)(4)(ii)(B).

As the Supreme Court explained in *N.L.R.B.* v. *Fruit and Vegetable Packers & Warehousemen, Local 760, and Joint Council No. 28 of IBT* [*Tree Fruits Labor Relations Committee*],[32] not every form of union pressure with a secondary objective is "coercive." In *Tree Fruits* the Court found that Section 8(b)(4)(ii)(B) was not intended by Congress to prohibit all forms of picketing at secondary sites. Peaceful picketing, directed solely at the struck product, was held by the Court to be outside the statute's proscription.[33] Such restricted picketing, the Court reasoned, is not "attended by the abuses at which the statute was directed,"[34] and, therefore, "does not threaten, coerce, or restrain" the neutral business.[35] In so construing the statute, the Supreme Court did not create an "exception" to the secondary boycott proscription of Section 8(b)(4)(ii)(B). Rather, as the United States Court of Appeals for the District of Columbia has noted, the Supreme Court "construed the statute and identified a type of consumer boycott which Congress had never intended to prohibit."[36]

More recently, in *N.L.R.B.* v. *Retail Store Employees Union, Local 1001* [*Safeco Title Insurance Co.*],[37] *the Supreme Court reaffirmed and clarified its holding in Tree Fruits.* In *Safeco* the Court determined that a union "coerces" a neutral business when it engages in a consumer boycott which goes beyond the struck product or which will foreseeably cause "ruin or substantial loss" to the neutral.[38] The Court in *Safeco* thus pointed to the gravamen of "coercion" under Section 8(b)(4)(ii)(B): conduct which has a reasonably foreseeable consequence of forcing a neutral business into a labor dispute which is not its own. Thus, the question which we must answer, whether publication in Respondent's own union newspapers of Delta's accident and consumer complaint record and the admonition to boycott Delta amounted to "coercion" of Delta, goes not to Respondent's motives "but to the nature and foreseeable consequences of the pressure which the union actually placed" on Delta.[39]

Publication of information and admonitions in a union's own newspapers does not have a reasonably foreseeable consequence of drawing a neutral business into a labor dispute not its own. Like consumer picketing which is limited to the struck product, publication of information and admonitions in a union's own newspapers may be expected to have but a limited impact on the business of the neutral. Nor does it materially expand the scope of the primary dispute, since the publication is designed to reach neither consumers nor neutral employees. The secondary boycott provisions of the Labor-Management Reporting and Disclosure Act of 1959 were aimed at preventing the expansion of labor disputes beyond the principal combatants and preventing economic injury to "innocent" business and employees. The publication of information and admonitions in the newspapers of the primary union does not foster such expansion or injury; the foreeable impact of such intraunion communication on the neutral business is trivial.

For these reasons, the challenged newspaper publications are not "attended by the abuses at which the statute was directed,"[40] and, therefore, cannot be said to be "coercive" within the meaning of Section 8(b)(4)(ii)(B). Following the Supreme Court's reasoning in *Tree Fruits* and *Safeco*, I conclude that Congress did not intend Section 8(b)(4)(ii)(B) to reach the publication of information and admonitions in a union's own newspapers.

Moreover, restrictions on a union's right to engage in communicative activities raise complex and serious constitutional questions. Where Congress has spoken clearly, this Board will follow its established policy of assuming the constitutionality of the Act.[41] But where, as in this case regarding potential restrictions on a union's use of its own newspapers, the statute does not require a finding that Congress intended to limit speech, it would be inappropriate for this Board to infer such restrictions. Indeed, our finding of such restrictions would be particularly inappropriate in this case, where, as noted above, the foreseeable impact, if any, on the neutral employer is trivial.

Accordingly, I would hold that Respondent's publication, in its own newspapers, of Delta's accident and consumer record and the admonition to

[32] 377 U.S. 58 (1964).
[33] *Id.* at 63.
[34] *Id.* at 64.
[35] *Id.* at 71.
[36] *Teamsters, Local 812* [*Monarch Long Beach Corp.*] v. *N.L.R.B.*, 105 LRRM 2658, 90 LC ¶ 12,417 (D.C Cir. 1980).
[37] 447 U.S. 607 (1980).
[38] 447 U.S. at 614.
[39] *Teamsters Local 812* v. *N.L.R.B., supra*, 105 LRRM at 2666.
[40] *Tree Fruits, supra* at 64.
[41] See fn. 30, *supra.*

boycott Delta does not violate Section 8(b)(4)(ii)(B) of the Act.[42]

MEMBER ZIMMERMAN, concurring in part and dissenting in part:

The majority today adopts an inordinately narrow interpretation of the "publicity" proviso to Section 8(b)(4) of the Act.[43] It unduly restricts the content of a union's appeal to the customers of a secondary employer who uses the services of or sells goods produced by a primary employer with whom that union has a labor dispute. The majority holds that *all* apparently coercive information on handbills, or in other nonpicketing publicity, aimed at a secondary employer must relate to the primary dispute in order for such publicity to be privileged under the proviso. In so doing, it misconstrues the language of the proviso, misreads its legislative history, misapplies Board precedent, and mistakenly ignores serious constitutional issues.

I cannot agree that the proviso must be construed so as to remove from its protection publicity which is limited to factually accurate and truthful statements, and is placed in the context of the primary dispute, merely because such material may be unrelated to the primary dispute. Rather, I would find that once a union identifies the primary employer with whom it has a dispute, and the primary's relationship to the secondary employer it asks customers to boycott, it may include additional information related solely to its request to cease trading with the secondary, at least so long as that information, as here, is truthful.

In interpreting the proviso's requirement that publicity be "for the purpose of truthfully advising the public" of a primary labor dispute, I look to the language of the proviso; its legislative history,[44] particularly the first amendment considerations underlying its enactment; prior Board decisions; and the constitutional cautions of the Supreme Court, including those most recently set forth in *N.L.R.B.* v. *Catholic Bishop of Chicago.*[45]

The Legislative History

Congress incorporated the relevant provisions of Section 8(b)(4), including the proviso, into the Act as part of the 1959 Landrum-Griffin amendments. Although ample legislative history supports the broad proscriptions of secondary conduct codified in Section 8(b)(4), the legislative history of the publicity proviso is limited essentially to two statements by then Senator John F. Kennedy, who chaired the conference between the Senate and House to resolve the differences between the two versions of the bills they passed.

The first statement appears in an analysis of the Senate and House bills prepared during the protracted conference on the legislation. The statement analyzed the effects of the House-passed revisions to Section 8(b)(4) as follows:

> The House bill provides that a union may not "restrain" or "coerce" an employer where an object is to require him to cease doing business with any other employer. The prohibition reaches not only picketing but leaflets, radio

[42] Member Zimmerman finds the publication of the material contained in the first handbill to be violative of Sec. 8(b)(4)(ii)(B) on the grounds that this material failed to identify adequately the nature of Respondent's primary dispute and the identity of the primary employer. I cannot agree. As I have noted above, the requirements of the publicity proviso must be met only where a union's publicity is otherwise proscribed under Sec. 8(b)(4)(ii)(B). The publication of information in a union's own newspapers is not so proscribed. I would therefore find that *none* of Respondent's newspaper publications constitutes a violation of the statute.

Member Zimmerman insists upon a distinction between the "placing of the advertisements" and "agreeing to run them." Under the facts of the instant case, this appears to me to be a distinction without a difference. The specific language of the complaint is that Respondent "caused to be published" in its newspapers the material contained in the handbills. Obviously, the complaint is addressed to the Respondent's actions in placing the advertisements. Moreover, Sec. 8(b)(4)(ii)(B) provides sanctions only against "a labor organization or its agents." It could not, therefore, provide a basis for the finding of an unfair practice by a newspaper that was not published by a labor organization.

The only circumstance in which a newspaper could, under any interpretation of Sec. 8(b)(4)(ii)(B), commit an unfair labor practice by "agreeing to run" an advertisement is where the newspaper, as in this case, is published by a labor organization. In such cases, however, the distinction between placing an advertisement and agreeing to run it is blurred to the point of extinction.

[43] The relevant text of Sec. 8(b)(4) provides:

> (b) It shall be an unfair labor practice for a labor organization or its agents—
>
> • • • • •
>
> (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of Section 9 . . . .

The publicity proviso to Sec. 8(b)(4) states:

> *Provided further*, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution.

[44] Unlike my colleagues, I do not believe that the meaning of the "for the purpose of" language in the proviso is clear on its face. The phrase is susceptible to varying interpretations and, therefore, an examination of the legislative history is required, not merely "desirable."

[45] 440 U.S. 490 (1979).

broadcasts and newspaper advertisements, thereby interfering with freedom of speech.

* * * * *

[O]ne of the apparent purposes of the amendment is to prevent unions from appealing to the general public as consumers for assistance in a labor dispute. This is a basic infringement upon freedom of expression. The portions of the House bill which have this effect are unacceptable.[46]

The Senate bill contained no similar proscription. Its silence condoned all peaceful activity—including picketing—aimed at inducing consumers to boycott a secondary employer. The result was a compromise in which the conferees adopted the House language and added the proviso.

The conferees did not file a joint explanatory statement. Thus, when the Senate considered the legislation, the only statement concerning the intent of the compromise language finally adopted came from the conference chairman, Senator Kennedy. In remarks on the Senate floor, he summarized the relevant provisions:

(c) The right to appeal to consumers by methods other than picketing asking them to refrain from buying goods made by nonunion labor and to refrain from trading with a retailer who sells such goods.

Under the Landrum-Griffin bill it would have been impossible for a union to inform the customers of a secondary employer that that employer or store was selling goods which were made under racket conditions or sweatshop conditions, or in a plant where an economic strike was in progress. We were not able to persuade the House conferees to permit picketing in front of that secondary shop, but we were able to persuade them to agree that the union shall be free to conduct informational activity short of picketing. In other words, the union can hand out handbills at the shop, can place advertisements in newspapers, can make announcements over the radio, and can carry on all publicity short of having ambulatory picketing in front of a secondary site.[47]

Thus, the Senate sought to permit any activity, including picketing, to persuade customers to boycott enterprises that sell struck goods. The compromise embodied in the publicity proviso authorized any informational activity, short of picketing, with the same objective.

Member Jenkins states the obvious when he observes that the proviso "plainly does impose some restrictions." He nevertheless disregards Senator Kennedy's statements of legislative intent which demonstrate that those restrictions are to be confined to those expressly set out in the language of the proviso.[48] Nowhere does the proviso state, as the majority holds, that the publicity in question must in its entirety be "related to" the primary dispute. Rather, the proviso simply requires that the information presented must be for the purpose of publicizing the relationship between the primary dispute and the secondary employer. Once that purpose is satisfied, I can find no basis, as do my colleagues, for embellishing the proviso with an interpretation that prohibits a union from buttressing its appeal for a boycott of the secondary employer with additional information about that employer, at least if such information is truthful.

The Supreme Court has recognized Congress' overriding concern for the first amendment rights involved in Section 8(b)(4). In its *Tree Fruits*[49] decision, which issued 5 years after enactment of the Landrum-Griffin Act, the Court construed this section quite narrowly. The conduct at issue in *Tree Fruits* was consumer picketing, and the issue presented was whether Section 8(b)(4)(ii) prohibited that picketing. The Court found that secondary picketing which "confined as it was to persuading customers to cease buying the product of the primary employer"[50] does not violate the statutory proscriptions. In so finding, the Court refused to "depart from [its] practice of respecting the congressional policy not to prohibit peaceful picketing except to curb 'isolated evils' spelled out by the Congress itself." To support this narrow construction of Section 8(b)(4)'s prohibition of consumer *picketing*, the Court carefully reviewed the legislative history of the publicity proviso. The Court concluded that:

The proviso indicates no more than that the Senate conferees' constitutional doubts led Congress to authorize publicity other than

[46] 105 Cong. Rec. 15222 (daily ed.), reprinted in II Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, 1708. Senator Kennedy's further remarks, cited by Member Jenkins, *supra* at 1388–89, are fully consistent with and only reaffirm these comments.

[47] 105 Cong. Rec. 16414 (daily ed. September 3, 1959), reprinted in II Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, 1432.

[48] Member Jenkins, in his separate opinion, suggests that this interpretation violates the canon of statutory construction which presumes each word of a statute to have meaning. But Member Jenkins, in his interpretation, discerns the statutory language "for the purpose of" to mean *solely* for the purpose of providing information concerning the primary dispute. He points to neither statutory language nor legislative history to support his highly restrictive interpretation.

[49] *N.L.R.B. v. Fruit and Vegetable Packers & Warehousemen, Local 760, and Joint Council No. 28 of IBT [Tree Fruits Labor Relations Committee, Inc.]*, 377 U.S. 58 (1964).

[50] *Tree Fruits, supra* at 71.

> picketing which persuades the customers of a secondary employer to stop all trading with him, but not such publicity which has the effect of cutting off his deliveries or inducing his employees to cease work.[51]

The unmistakable implication of the *Tree Fruits* decision is that a union may appeal to consumers to cease all trading with a secondary employer as long as it limits its activity to publicity. We have, of course, previously recognized that right.[52] Today, however, the majority holds that, in appealing for a consumer boycott of a secondary employer, a union must confine the content of its publicity solely to facts related to the primary dispute. Thus, they conclude that Handbills C and D are not protected by the proviso because they contain truthful safety and consumer information about the secondary employer, Delta, which is not directly related to the primary labor dispute. This holding breaks new, and I believe, unsupportable ground.

I believe the Court's construction of Section 8(b)(4)(ii) dictates the conclusion that the proviso leaves it to the handbilling union to decide what information concerning the secondary employer will be most effective in delivering the union's message in connection with the primary dispute, at least insofar as the publicity utilized is truthful and does not cause employees other than those of the primary employer to stop working. Nothing in the legislative history suggests a congressional intention to require a union to restrict publicity to information directly connected to the primary dispute when it attempts to persuade customers of a secondary employer to stop patronizing it. By such restriction, the majority today blurs and weakens the distinction between picketing and other publicity which Congress and the Supreme Court have so carefully maintained.

This critical distinction requires that the publicity proviso—which limits the activity prohibited by Section 8(b)(4)—be interpreted as broadly as is consistent with Congress' purpose in enacting Section 8(b)(4). The Supreme Court so acknowledged this correlation in *N.L.R.B.* v. *Servette, Inc.*,[53] issued the same day as *Tree Fruits*, when it stated:

> The proviso was the outgrowth of a profound Senate concern that the unions' freedom to appeal to the public for support of their case be adequately safeguarded . . . . There is nothing in the legislative history which suggests that the protection of the proviso was intended to be any narrower in coverage than the prohibition to which it is an exception, and we see no basis for attributing such an incongruous purpose to Congress.[54]

The breadth of the secondary activity which the Senate had been prepared to authorize, and which led to the enactment of the proviso, contradicts a construction of the proviso that finds unlawful publicity which, in its entirety, is not clearly and directly related to the secondary employer's role in the primary dispute.[55] The publicity proviso clearly envisions that secondary employers may become enmeshed in labor disputes as a result of their relationship with a primary employer, provided that such entanglement neither induces the secondary's employees to halt work nor interrupts deliveries to it.

The Supreme Court reaffirmed the rationale of *Tree Fruits* in its recent *Safeco* decision.[56] It referred with approval to its analysis of the legislative history of Section 8(b)(4),[57] while prohibiting "[p]roduct picketing that reasonably can be expected to threaten neutral parties with ruin or substantial loss . . . ."[58]

Justice Stevens concurred, making clear that the first amendment forbids content-based restrictions on speech, and joined in finding the secondary activity at issue in *Safeco* unlawful only because picketing "is a mixture of conduct and communications." In emphasizing that it is the means employed, rather than the ends sought, that justify disparate treatment of picketing and handbilling, Justice Stevens commented:

> Indeed, no doubt the principal reason why handbills containing the same message are so much less effective than labor picketing is that the former depend entirely on the persuasive force of the idea.[59]

Thus, if appeals to consumers take the form of "publicity, other than picketing," the proviso

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[51] *Tree Fruits, supra* at 70, 71.

[52] *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Milk Drivers and Dairy Employees Local 537 (Jack M. Lohman, d/b/a Lohman Sales Company)*, 132 NLRB 901 (1961); *Plumber, Steamfitters, & Pipefitters Local No. 155 (The Kroger Co.)*, 195 NLRB 900 (1972).

[53] 377 U.S. 46 (1964).

[54] *Servette, supra* at 55. Accordingly, the Court, in *Servette*, interpreted the proviso broadly, finding that products "produced by an employer" include products distributed by a wholesaler with whom the primary dispute exists.

[55] Contrary to Member Jenkins' assertion, my interpretation of the legislative history does not bring any and all publicity within the proviso. Rather, in my view, the legislative history shows that the proviso's requirements must be construed narrowly and that there is no basis for the Board to establish an additional restriction that *all* publicity relate specifically and exclusively to the primary dispute. Publicity will enjoy the protection of the proviso so long as it clearly identifies the nature of the primary dispute. The inclusion of additional truthful material does not undermine that protection.

[56] *N.L.R.B.* v. *Retail Store Employees Union, Local 1001 [Safeco Title Insurance Co.]*, 447 U.S. 607 (1980).

[57] *Ibid.* at 612–615.

[58] *Id.* at 614.

[59] *Id.* at 619.

comes into play and any resultant deterrence of customers of the secondary employer will be tolerated because of the preference afforded freedom of speech. The only *caveats* are those plainly specified in the proviso itself: if the appeals fail to truthfully identify the primary dispute; or if they result in the cessation of work by employees of neutrals at the site.

Board and Judicial Precedent

Prior Board decisions construing the publicity proviso also support a broad interpretation. The Board has repeatedly reaffirmed the principle, initially enunciated in *Middle South Broadcasting Co.*,[60] that the proviso permits a consumer boycott of a secondary employer's entire business and not merely a limited boycott of the product or services involved in the primary dispute.[61] If the proviso protects a consumer boycott which extends beyond the product involved in the primary dispute, it must also protect publicity that includes information which extends beyond the primary dispute, at least as long as such information is truthful and identifies the secondary employer's connection with the primary employer. Applying that principle to the instant case, Respondent properly could use information in its handbills pertaining to Delta's entire business, and need not be limited to that aspect of Delta's operation involved in the primary dispute.

More recently, in *Pet, Incorporated*,[62] the Board found that the United Steelworkers did not violate Section 8(b)(4)(ii)(B) by engaging in handbilling and other publicity calling for a total consumer boycott of Pet and its numerous subsidiaries and divisions in support of a strike against one of those subsidiaries. The Board deemed it important that it was not established that the handbills and advertisements in question were on their face untruthful; i.e., that they substantially departed from fact or intended to deceive.[63]

In *Pet supra*, the Board stated that "A consumer boycott falls outside the protection of the proviso if (1) it results in refusals by employees, other than those of the primary employer, to pick up, deliver, or transport goods or to perform services or (2) the publicity is untruthful. If either situation obtains, the publicity proviso is inapplicable."[64]

A year later, in *DeBartolo Corporation*,[65] the Board found that the publicity proviso protected a union's handbilling urging a total consumer boycott of all the tenants of a shopping mall in furtherance of a primary dispute with a construction company that was building a store for only one of those tenants. Relying in part on its reasoning in *Pet*, the Board concluded that, within the meaning of the proviso, a producer-distributor relationship existed between the construction company and the shopping mall's owner, even though it was the tenant—rather than the mall—that had engaged the construction company to erect the store. The Board in *DeBartolo* also utilized a broad reading of the proviso to find that the union's failure to identify the primary employer specifically by name in its handbill did not render the handbill untruthful, and therefore beyond the scope of the proviso. In its opinion enforcing the Board's decision, the U.S. Court of Appeals for the Fourth Circuit emphasized that the proviso's language "is not to be read literally but instead is to be broadly construed" in order to effectuate the proviso's "clear purpose of protecting labor's ability to publicize by means other than picketing its grievances to consumers."

The Board also broadly interpreted the proviso's truthfulness requirement in its subsequent decision in *K-Mart Corporation*.[66] The union in that case had a primary dispute with an excavation subcontractor which had been engaged by a general contractor that was building a new store for K-Mart. The union distributed handbills requesting a consumer boycott of K-Mart because of the company's use of the nonunion subcontractor. The handbills, however, mentioned neither the specific general contractor that actually had hired the subcontractor, nor the existence of any general contractor. The Board nevertheless decided that this omission did not render the handbills untruthful within the meaning of the proviso. According to the Board, the failure to refer to a general contractor did not create the false impression that K-Mart had hired the subcontractor, nor misleadingly imply that the union's primary dispute was with K-Mart.

My reading of the "for the purpose of" clause as permitting the publicizing of truthful additional information that is not directly related to the primary

[60] *Local No. 662, Radio and Television Engineers, affiliated with International Brotherhood of Electrical Workers, AFL-CIO (Middle South Broadcasting Co.)*, 133 NLRB 1698, 1705, 1715-17 (1961).

[61] *International Union of Operating Engineers, Local No. 139, AFL-CIO, et al. (Oak Construction, Inc.)*, 226 NLRB 759, 760 (1976); *American Federation of Television and Radio Artists, San Francisco Local, and National Association of Broadcast Employees and Technicians, Local 55 (Great Western Broadcasting Corporation, d/b/a KXTV)*, 150 NLRB 467 (1964).

[62] 244 NLRB 96 (1979), reversed on other grounds 641 F.2d 545 (8th Cir. 1981).

[63] *Pet, Incorporated, supra* at 100. See also *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Milk Drivers and Dairy Employees Local 537 (Jack M. Lohman, d/b/a Lohman Sales Company)*, 132 NLRB 901 (1961).

[64] *Pet, Incorporated, supra* at 100.

[65] *Florida Gulf Coast Building Trades Council, AFL-CIO (The Edward J. DeBartolo Corporation)*, 252 NLRB 702 (1980), enfd. 662 F.2d 264 (4th Cir. 1981).

[66] *Central Indiana Building and Construction Trades Council (K-Mart Corporation)*, 257 NLRB 86 (1981).

dispute comports fully with the Board's reasoning as to the proviso's scope in *Pet, DeBartolo*, and *K-Mart*.

Constitutional Considerations

The restrictions embodied in Section 8(b)(4) closely touch first amendment guarantees.[67] As discussed above, the publicity proviso to that section came into being in large part to allay Senate concerns that the section's proscriptions would otherwise impermissibly infringe first amendment rights. These first amendment concerns are integral to my consideration of whether Respondent's conduct was saved by the proviso.

My colleagues make the anomalous assertion that, since they have found Respondent's conduct unlawful under Section 8(b)(4), they need not reach or pass upon the first amendment question unavoidably raised by their narrow interpretation of the publicity proviso. The majority blithely "presume[s] that [its] finding of a violation here is in accordance with the Constitution." I could not join in that presumption even if I could join in their interpretation of the proviso. When the Board finds that a respondent's speech (or other conduct protected by the first amendment) has violated the Act, it must then consider whether the statutory proscription relied upon accords with the first amendment's protections.

The Board recognized this as the proper mode of inquiry in both *Pet* and *DeBartolo*. In those cases it declined to reach the first amendment issue only because it found the respondent union's conduct protected by the publicity proviso. Thus, the Board in *Pet* stated that "[R]esolution of that issue [whether the publicity in question was protected by the free speech provision of the Constitution] would be required only if we found Respondent's conduct was not protected by the publicity proviso."[68] Likewise, in *Great Western Broadcasting*,[69] the Board said that the issue of whether the first amendment protected a respondent's conduct would arise if it found the actions to be coercive and not protected by the proviso.[70]

The majority's reluctance to address the first amendment implications of its interpretation of the publicity proviso in the instant case constitutes an alarming and unacknowledged departure from the Board's well-established practice. The Board has on numerous occasions in prior decisions cogently addressed first amendment issues upon finding that a respondent's conduct violated the Act or that the first amendment did not bar the Board's assertion of jurisdiction over a particular employer.[71]

Our administrative responsibility requires us to regard each provision of the Act as presumptively constitutional. Particularly where the statutory language is clear, and the constitutional issue close, we must come down in favor of the validity of the statute. Thus, where the meaning of specific language in the Act is plain on its face and therefore susceptible to only one interpretation—such as the proviso's requirement that publicity truthfully identify the primary dispute—the Board must, absent an indisputable constitutional infringement, conclude that application of such plain language to a respondent's conduct does not contravene constitutional rights. However, when faced with statutory language which is subject to different interpretations—such as the proviso's "for the purpose of" phrase—it is incumbent upon the Board to interpret the Act in a way that most accords with constitutional guarantees. The majority has failed to give sufficient weight to constitutional considerations in construing the ambiguity of the "for the purpose of" language, and has chosen an interpretation that impinges upon the first amendment.[72]

Unlike my colleagues, I heed the Supreme Court's admonition regarding interpretation of the Act in areas that touch upon the first amendment. In *Catholic Bishop*,[73] the Court declared:

> [I]n the absence of a clear expression of Congress' intent . . . we decline to construe the Act in a manner that could in turn call upon the Court to resolve difficult and sensitive questions arising out of the guarantees of the First Amendment. . . .[74]

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[67] *N.L.R.B.* v. *Retail Store Employees Union, Local 1001 [Safeco Title Insurance Co.]*, 447 U.S. 607 (1980); *N.L.R.B.* v. *Fruit and Vegetable Packers & Warehousemen, Local 760, and Joint Council No. 28 of IBT [Tree Fruits Labor Relations Committee, Inc.]*, 377 U.S. 58, 77 (1964) (concurring opinion, Black, J.).

[68] *Pet, Incorporated, supra* at 102.

[69] *American Federation of Television and Radio Artists, San Francisco Local, et al. (Great Western Broadcasting Corporation d/b/a KXTV)*, 150 NLRB 467 (1964).

[70] *Id.* at 472.

[71] See *District 1199, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO (United Hospitals of Newark)*, 232 NLRB 443 (1977); *Motherhouse of the Sisters of Charity of Cincinnati, Ohio*, 232 NLRB 318 (1977); *Cardinal Timothy Manning, etc.*, 223 NLRB 1218 (1976); *Roman Catholic Archdiocese of Baltimore, etc.*, 216 NLRB 249 (1975); *Henry M. Hald High School Association, etc.*, 213 NLRB 415 (1974); *The First Church of Christ, Scientist in Boston, Massachusetts*, 194 NLRB 1006 (1972).

[72] In addition, the construction of the proviso I adopt minimizes the potential constitutional infringement recognized by the Supreme Court in *Safeco, supra*. My colleagues' interpretation prohibits any and all statements directed at the neutral employer that are not directly related to the primary dispute. The construction I adopt permits such statements, requiring only a clear identification that the union's primary dispute is with another employer and not with the neutral employer to which the informational activity is being directed.

[73] *N.L.R.B.* v. *Catholic Bishop of Chicago*, 440 U.S. 490 at 507.

[74] That the issue in *Catholic Bishop* was the Board's jurisdiction, rather than proscribed conduct, and that it involved the first amendment's religion rather than free speech clause, does not lessen the principles involved.

That admonition, together with the legislative history of the proviso, impels me to reject the unduly restrictive interpretation the majority embraces with respect to the safety and consumer information included on Handbills C and D.

Application to the Instant Case

Applying my interpretation of the proviso, I nonetheless find two of the four handbills distributed by Respondent outside the proviso's protection. Handbills A and B did not adequately identify the primary employer, or the secondary employer's relationship to the primary dispute. The first two handbills made no reference to the primary employer, Statewide Maintenance Company, or to any maintenance company. They not only failed to identify the nature of the primary dispute, but clearly implied that Respondent had a primary dispute with Delta Airlines. Thus, Handbills A and B do not even arguably satisfy the proviso's requirement that publicity truthfully identify the neutral employer's relationship to the dispute. Supreme Court decisions in the first amendment area demonstrate that this duty to properly identify is a constitutionally permissible limitation on speech.[75] Therefore, I join in finding that the distribution of Handbills A and B violates Section 8(b)(4)(ii)(B).[76] Handbills C and D, however, contain appropriate identification.[77] The parties stipulated that the safety statistics contained in the handbills were accurate. The General Counsel does not argue, and in any event has not shown, that the failure to compare Delta's safety record to that of other airlines misled recipients of the handbills.[78] Accordingly, to the extent the Board finds that circulation of Handbills C and D constituted a violation, I dissent.

In summary, I believe that the correct interpretation of the publicity proviso is as follows:

(A) Once a union informs the public, on the face of its handbills, of the identity of the primary employer with which it has a dispute, it may proceed to request the public to boycott the secondary employer; and

(B) The union may choose to bolster that request by conveying to the public additional information about the secondary employer, at least where, as here, such information is factually correct.

For the reasons I have set forth, I cannot join the severe content-based restrictions the majority places upon a union in efforts to achieve a consumer boycott of a secondary employer who sells or uses the goods or services of an employer with whom that union has a dispute. I concur only in the result my colleagues reach as to the first two of Respondent's four handbills.

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[75] See, e.g., *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 771–772, fn. 24 (1976); *Carey* v. *Brown*, 447 U.S. 455 (1980).

[76] Respondent reprinted Handbills A and C as advertisements in two of its newspapers. I join the Chairman and Members Fanning and Hunter in finding publication of Handbill A to be a violation, but since I disagree with the conclusion that the distribution of Handbill C was not protected by the publicity proviso, I do not find that publication of that handbill violated the Act. As regards the unlawful publication of Handbill A, I specifically concur in my colleagues' comments. I would make clear, however, that the violation consisted in placing the advertisements, not in agreeing to run them.

Member Jenkins claims that this is a distinction without a difference, although he acknowledges that the specific language of the complaint is that Respondent "caused to be published" the material in question. Unlike Member Jenkins, I do not regard it as obvious from this language that the complaint is addressed to Respondent's actions in placing the advertisements, since the complaint leaves open the question whether a union that is not party to a primary labor dispute could violate the Act if it agreed to run in its own newspaper an advertisement concerning that dispute placed by another union involved in the dispute. Obviously, had Respondent chosen to run the advertisements in newspapers of general circulation, the violation would run against Respondent, not the publisher of the newspaper. In this regard, I note that the Supreme Court has indicated that commercial speech, such as paid advertising, does not stand on the same constitutional footing as traditional press activities. See, e.g., *Young* v. *American Mini Theatres, Inc.*, 427 U.S. 50 (1976). It is unnecessary to reach the more troublesome issue of whether reprinting of the offending handbill as part of a news story concerning Respondent's activity might make out a separate violation because of Respondent's control of the newspapers involved.

[77] Handbill C urged consumers to boycott Delta on the ground that the airline had caused Respondent's members to become unemployed by contracting "with a maintenance company which does not provide" Respondent's wages, benefits, and standards. Handbill D specifically identified Statewide by name.

[78] The Administrative Law Judge and the majority suggest that the presentation of the safety statistics tended to mislead the public. Even if that issue were squarely presented on this record, and it is not, I would not find a violation based on the tendency of admittedly truthful facts to mislead the public. As I have indicated, the great sensitivity of the constitutional issues involved and the narrowness of the legislative intent underlying the proviso lead me to read its terms broadly. Nowhere does the proviso indicate that otherwise truthful publicity raised in the context of a primary labor dispute would lose its protection if such publicity tends to mislead its recipients.

In connection with their suggestion regarding the alleged misleading effect of the safety statistics, my colleagues rely on the Supreme Court's opinion in *N.L.R.B.* v. *Local Union No. 1229, International Brotherhood of Electrical Workers [Jefferson Standard Broadcasting Company]*, 346 U.S. 464 (1953). That case clearly is inapposite to an interpretation of the proviso of Sec. 8(b)(4). The handbill distribution in that case was found not to be protected by the Act because it was not linked in any way to the ongoing labor dispute and, indeed, made no reference to it whatsoever. Instead, it simply and solely attacked the employer's product, an attack which the union was found to have purposely kept separate from its intentionally undisclosed labor dispute with the employer. In contrast, here Respondent publicized Delta's safety record in Handbills C and D by explicitly identifying the primary labor dispute and Delta's secondary connection therewith. I agree that the proviso does not protect publicity that fails to mention the primary labor dispute, and for that reason I join in finding Handbills A and B outside its ambit.

Were we to construe the proviso to bar publicity based on its tendency to mislead, we would step well beyond a content-based restriction to consideration of the effect of truthful content on its audience. Absent the clearest congressional indication of an intention to so restrict publicity, I would not do so. Such a construction would seek out a conflict between the Act and the first amendment, which the Supreme Court specifically instructs should be avoided. *N.L.R.B.* v. *Catholic Bishop of Chicago, supra* at 507.

APPENDIX IV

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT threaten, coerce, or restrain Delta Air Lines, Inc., or any other person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is to force or require Delta Air Lines, Inc., to cease doing business with Statewide Building Maintenance Corporation.

HOSPITAL AND SERVICE EMPLOYEES UNION, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, LOCAL 399

DECISION

STATEMENT OF THE CASE

MARTIN S. BENNETT, Administrative Law Judge: This matter was briefly heard at Los Angeles, California, on July 10, 1979, although, as will appear, the case has had an extensive and indeterminate prior history before the Board.

The original complaint, as later amended, issued December 28, 1977, and was based on a charge filed September 27, 1977, by Delta Air Lines, Inc., herein Delta, and alleges that Respondent, Hospital and Service Employees Union, Service Employees International Union, AFL-CIO, Local 399, has engaged in unfair labor practices within the meaning of Section 8(b)(4)(ii)(B) of the Act. Briefs have been submitted by all parties.

Upon the entire record of the case, but not from any observation of the witnesses because there were none, I make the following:

FINDINGS OF FACT

I. JURISDICTIONAL FINDINGS

Delta Air Lines, Inc., operates from Los Angeles, California, to other States of the United States, and there is no issue herein as to its being a person engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Hospital and Service Employees Union, Service Employees, International Union, AFL-CIO, Local 399, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Introduction; the Issue*

Although the matter before me involves but a 17-page transcript, the extensive exhibits disclose that it has had a lengthy and perhaps unique history before the Board. I shall endeavor to treat this history as briefly as possible.

Initially, the primary and basic issue is whether Respondent Union has engaged in conduct violative of Section 8(b)(4)(ii)(B) of the Act in that it engaged in handbilling which, according to the General Counsel and Delta, was violative of the Act in that it was not conducted "for the purpose of truthfully advising the public" of the merits of the dispute.

This is perhaps an oversimplification, but the simple issue is whether the handbills distributed by Respondent Union were, if not technically untruthful, perforce so and particularly damaging as to warrant a conclusion that, as a matter of law, they were untruthful because of the scurrilous matters they raised.

B. *Sequence of Events*

There is little or no conflict as to what has taken place herein. What appears to be the crux of the matter is that the Board, despite unanimous urging from all parties, has declined to pass upon this issue and, as a result, I have inherited it.

Initially, it is in order, as I view it, to set forth the history of this matter before the Board.

After several amendments to the complaint all parties, on April 17, 1978, moved that the case be transferred to the Board. Attached thereto was an extensive stipulation of facts which in essence reflects the facts before the Board and presently before me.

In October 1976, Delta decided to terminate a contract for janitorial services with National Cleaning Company, herein National, for maintenance service and this was duly terminated on December 16, 1976. I deem it significant that this contract, as well as a later contract described below with Statewide Building Maintenance Corporation, herein Statewide, covered only janitorial services at the Los Angeles office of Delta, and at its curbside facilities at the Los Angeles airport. Neither of these contracts included any services performed on Delta equipment and more specifically on its planes.

On or about December 16, 1976, Delta contracted for these same services with Statewide; the latter and Respondent Union have at no time been signatory to any bargaining contract. As a result, Respondent Union has since that date been engaged in a labor dispute with Statewide but has had no dispute with Delta as such.

Pursuant to its dispute with Statewide, Respondent Union has distributed handbills at the two Delta locations described above. These are basically not out of line and merely declare that Delta is unfair and urge the public not to fly Delta. What is deemed significant herein is the reverse side of the handbills which state:

It takes more than money to fly Delta.

It takes nerve.

Let's look at the accident record.

Date	*Location*	*Plane*	*Damage*	*Death/Injuries*
5/27/76	Atlanta, Ga...	DC 8	none	yes
3/3/76	Springfield, Mo..	Boeing 727	none	yes

Date	*Location*	*Plane*	*Damage*	*Death/Injuries*
2/22/76	Tampa, Fla...	Boeing 727	none	yes
9/22/75	Texico Vortac, Tex..	DC 8	none	yes
8/8/75	Wilmington, Del..	DC 8	none	yes
11/25/74	Flushing, N.Y..	Boeing 727	substan-tial	yes
11/6/74	Detroit, Mich..	DC 8	none	yes
7/3/74	Atlanta, Ga...	Lock-heed 1011	minor	yes
7/27/74	Fort Myers, Fla..	DC 8	none	yes
2/21/74	Pontiac, Ill....	DC 9	none	yes
2/15/74	Alexandria, La..	DC 9	none	yes
12/21/73	Lebanon, N.H..	DC 9	none	yes
11/27/73	Chattanoo-ga, Tenn..	DC 9	de-stroyed	yes
8/20/73	Belle Glade, Fla..	DC 8	none	yes
7/31/73	Boston, Mass..	DC 9	de-stroyed	yes
4/1/73	New York-Atlanta.	DC 9	none	yes
2/28/73	Las Vegas, Nev..	DC 8	none	yes
9/28/73	Chicago, Ill..	DC 9	substan-tial	yes
7/22/72	Knoxville, Tenn..	Convair 880	none	yes
9/30/72	Norfolk, Va..	Boeing 727	minor	yes
2/26/72	Alma, Ga.....	DC 8	none	yes
12/20/72	Chicago, Ill..	Convair 880	substan-tial	yes
3/28/72	Little Rock, Ark..	Convair 880	none	yes
3/19/72	Atlanta, Ga...	DC 9	substan-tial	yes
5/30/72	Ft. Worth, Tex..	DC 9	de-stroyed	yes
8/18/71	Savannah, Ga..	DC 9	substan-tial	yes
8/5/71	Spartan-burg, S.C..	Convair 880	none	yes
10/9/71	Chicago, Ill..	DC 9	minor	yes
9/17/69	Dallas, Tex...	DC 8	substan-tial	yes
8/2/69	Atlanta, Ga...	DC 8	none	yes
5/8/69	Chicago, Ill..	DC 8	substan-tial	yes
9/4/69	Jackson, Miss..	Convair 880	none	yes
6/10/69	Macon, Ga. ..	Convair 440	substan-tial	yes
7/22/69	Evergreen, Ala..	DC 8	none	yes
1/31/69	Jackson-ville, Fla..	DC 8	substan-tial	yes
3/16/69	Pulaski, Va...	DC 8	none	yes
6/30/68	Memphis, Tenn..	Convair 340	substan-tial	yes
3/20/68	Evansville, Ind..	Convair 440	substan-tial	yes
2/15/68	Chattanoo-ga, Tenn..	DC 6	substan-tial	yes
4/15/67	Milwaukee, Wis..	Convair 440	substan-tial	yes
9/19/67	Banning, Ca..	DC 8	none	yes
6/24/67	Newark, N.J..	Convair 850	substan-tial	yes
3/7/67	Memphis, Tenn..	Lock-heed 362	none	yes
3/30/67	Kenner, La...	DC 8	de-stroyed	yes
2/27/66	New Orleans, La..	DC 8	substan-tial	yes
3/4/66	Chicago, Ill..	DC 9	none	yes
3/3/66	Birming-ham, Ala..	DC 6	substan-tial	yes
11/24/64	Baton Rouge, La..	C 46	substan-tial	yes
3/26/64	Tampa, Fla...	Convair 880	minor	yes
11/1/63	Atlanta, Ga...	Convair 440	substan-tial	yes
8/13/63	Indianapo-lis, Ind..	DC 6	substan-tial	yes
1/14/63	Tampa, Fla...	DC 8	substan-tial	yes
1/13/63	Memphis, Tenn..	DC 7	substan-tial	yes

Total deaths—129 Total Injuries—3,680

Information from the National Transportation Board, Washington, D.C., 20594—Briefs of Accidents-Delta Air—lines-All Operations—1962 to 1976 (1976 incomplete)

Consumer Complaints

Month and Year	*Letters per month*	*Complaints per month*
July 1976	35	37
August 1976	22	27
September 1976	19	22
October 1976	30	30
March 1977	44	54
April 1977	31	39
May 1977	30	35
June 1977	30	38
July 1977	24	25
TOTAL COMPLAINTS	265	307

In addition, this handbill *in toto* was published in the September 1977 edition of "Service Union Reporter," a newspaper of the California State Council of Service Employees, and also in the September 1977 edition of "Service Union Reporter, Political Action Report."

From October 6 through October 12, 1977, Respondent distributed a second handbill at the same two facilities of Delta. This reads as follows:

It takes more than money to fly Delta.

It takes nerve.

Let's look at the accident record.

Date	*Location*	*Plane*	*Damage*	*Death/Injuries*
5/27/76	Atlanta, Ga.	DC 8	none	yes

Date	*Location*	*Plane*	*Damage*	*Death/Injuries*
3/3/76	Springfield, Mo.	Boeing 727	none	yes
2/22/76	Tampa, Fla.	Boeing 727	none	yes
9/22/75	Texico Vortac, Tex.	DC 8	none	yes
8/8/75	Wilmington, Del.	DC 8	none	yes
11/25/74	Flushing, N.Y.	Boeing 727	substantial	yes
11/16/74	Detroit, Mich.	DC 8	none	yes
7/3/74	Atlanta, Ga.	Lockheed 1011	minor	yes
7/27/74	Fort Myers, Fla.	DC 8	none	yes
2/21/74	Pontiac, Ill.	DC 9	none	yes
2/15/74	Alexandria, La.	DC 9	none	yes
12/21/73	Lebanon, N.H.	DC 9	none	yes
11/27/73	Chattanooga, Tenn.	DC 9	destroyed	yes
8/20/73	Belle Glade, Fla.	DC 8	none	yes
7/31/73	Boston, Mass.	DC 9	destroyed	yes
4/1/73	New York-Atlanta	DC 9	none	yes
2/28/73	Las Vegas, Nev.	DC 8	none	yes
9/28/73	Chicago, Ill.	DC 9	substantial	yes
7/22/72	Knoxville, Tenn.	Convair 880	none	yes
9/30/72	Norfolk, Va.	Boeing 727	minor	yes
2/26/72	Alma, Ga.	DC 8	none	yes
12/20/72	Chicago, Ill.	Convair 880	substantial	yes
3/28/72	Little Rock, Ark.	Convair 880	none	yes
3/19/72	Atlanta, Ga.	DC 9	substantial	yes
5/30/72	Ft. Worth, Tex.	DC 9	destroyed	yes
8/18/71	Savannah, Ga.	DC 9	substantial	yes
8/5/71	Spartanburg, S.C.	Convair 880	none	yes
10/9/71	Chicago, Ill.	DC 9	minor	yes
9/17/69	Dallas, Tex.	DC 8	substantial	yes
8/2/69	Atlanta, Ga.	DC 8	none	yes
5/8/69	Chicago, Ill.	DC 8	substantial	yes
9/4/69	Jackson, Miss.	Convair 880	none	yes
6/10/69	Macon, Ga.	Convair 440	substantial	yes
7/22/69	Evergreen, Ala.	DC 8	none	yes
1/31/69	Jacksonville, Fla.	DC 8	substantial	yes
3/16/69	Pulaski, Va.	DC 8	none	yes
6/30/68	Memphis, Tenn.	Convair 340	substantial	yes
3/20/68	Evansville, Ind.	Convair 440	substantial	yes
2/15/68	Chattanooga, Tenn.	DC 6	substantial	yes
4/15/67	Milwaukee, Wis.	Convair 440	substantial	yes
9/19/67	Banning, Ca.	DC 8	none	yes
6/24/67	Newark, N.J.	Convair 850	substantial	yes
3/7/67	Memphis, Tenn.	Lockheed 362	none	yes
3/30/67	Kenner, La.	DC 8	destroyed	yes
2/27/66	New Orleans, La.	DC 8	substantial	yes
3/4/66	Chicago, Ill.	DC 9	none	yes
3/3/66	Birmingham, Ala.	DC 6	substantial	yes
11/24/64	Baton Rouge, La.	C 46	substantial	yes
3/26/64	Tampa, Fla.	Convair 880	minor	yes
11/1/63	Atlanta, Ga.	Convair 440	substantial	yes
8/13/63	Indianapolis, Ind.	DC 6	substantial	yes
1/14/63	Tampa, Fla.	DC 8	substantial	yes
1/13/63	Memphis, Tenn.	DC 7	substantial	yes

Total deaths—129 Total Injuries—3,680
Information from the National Transportation Board, Washington, D.C., 20594—Briefs of Accidents-Delta Air—lines-All Operations—1962 to 1976 (1976 incomplete)

From October 13 to the date of the issuance of the complaint, Respondent Union has distributed a third handbill at the two Delta locations. It reads as follows:

It takes more than money to fly Delta.

It takes nerve.

Let's look at the accident record.

Date	*Location*	*Plane*	*Damage*	*Death/Injuries*
2/27/76	Atlanta, Ga.	DC 8	none	yes
3/3/76	Springfield, Mo.	Boeing 727	none	yes
2/22/76	Tampa, Fla.	Boeing 727	none	yes
9/22/75	Texico Vortac, Tex.	DC 8	none	yes
8/8/75	Wilmington, Del.	DC 8	none	yes
11/25/74	Flushing, N.Y.	Boeing 727	substantial	yes
11/16/74	Detroit, Mich.	DC 8	none	yes
7/3/74	Atlanta, Ga.	Lockheed 1011	minor	yes
7/27/74	Fort Myers, Fla.	DC 8	none	yes
2/21/74	Pontiac, Ill.	DC 9	none	yes
2/15/74	Alexandria, La.	DC 9	none	yes
12/21/73	Lebanon, N.H.	DC 9	none	yes
11/27/73	Chattanooga, Tenn.	DC 9	destroyed	yes
8/20/73	Belle Glade, Fla.	DC 8	none	yes
7/31/73	Boston, Mass.	DC 9	destroyed	yes
4/1/73	New York-Atlanta	DC 9	none	yes
2/28/73	Las Vegas, Nev.	DC 8	none	yes
9/28/73	Chicago, Ill.	DC 9	substantial	yes
7/22/72	Knoxville, Tenn.	Convair 880	none	yes
9/30/72	Norfolk, Va.	Boeing 727	minor	yes
2/26/72	Alma, Ga.	DC 8	none	yes
12/20/72	Chicago, Ill.	Convair 880	substantial	yes
3/28/72	Little Rock, Ark.	Convair 880	none	yes
3/19/72	Atlanta, Ga.	DC 9	substantial	yes
5/30/72	Ft. Worth, Tex.	DC 9	destroyed	yes
8/18/71	Savannah, Ga.	DC 9	substantial	yes
8/5/71	Spartanburg, S.C.	Convair 880	none	yes
10/9/71	Chicago, Ill.	DC 9	minor	yes
9/17/69	Dallas, Tex.	DC 8	substantial	yes
8/2/69	Atlanta, Ga.	DC 8	none	yes
5/8/69	Chicago, Ill.	DC 8	substantial	yes
9/4/69	Jackson, Miss.	Convair 880	none	yes
6/10/69	Macon, Ga.	Convair 440	substantial	yes
7/22/69	Evergreen, Ala.	DC 8	none	yes
1/31/69	Jacksonville, Fla.	DC 8	substantial	yes
3/16/69	Pulaski, Va.	DC 8	none	yes
6/30/68	Memphis, Tenn.	Convair 340	substantial	yes
3/20/68	Evansville, Ind.	Convair 440	substantial	yes
2/15/68	Chattanooga, Tenn.	DC 6	substantial	yes
4/15/67	Milwaukee, Wis.	Convair 440	substantial	yes
9/19/67	Banning, Ca.	DC 8	none	yes
6/24/67	Newark, N.J.	Convair 850	substantial	yes
3/7/67	Memphis, Tenn.	Lockheed 362	none	yes
3/30/67	Kenner, La.	DC 8	destroyed	yes
2/27/66	New Orleans, La.	DC 8	substantial	yes
3/4/66	Chicago, Ill.	DC 9	none	yes
3/3/66	Birmingham, Ala.	DC 6	substantial	yes
11/24/64	Baton Rouge, La.	C 46	substantial	yes
3/26/64	Tampa, Fla.	Convair 880	minor	yes
11/1/63	Atlanta, Ga.	Convair 440	substantial	yes
8/13/63	Indianapolis, Ind.	DC 6	substantial	yes
1/14/63	Tampa, Fla.	DC 8	substantial	yes
1/13/63	Memphis, Tenn.	DC 7	substantial	yes

Total deaths—129 Total Injuries—3,680

Information from the National Transportation Board, Washington, D.C., 20594—Briefs of Accidents-Delta Air—lines-All Operations—1962 to 1976 (1976 incomplete)

Consumer Complaints

Month and Year	Letters per month	Complaints per month
July 1976	35	37
August 1976	22	27
September 1976	19	22
October 1976	30	30
March 1977	44	54
April 1977	31	39
May 1977	30	35
June 1977	30	38
July 1977	24	25
TOTAL COMPLAINTS	265	307

The foregoing handbill was also published in the two union publications described above in October 1977 and in the October and December editions, respectively.

On January 3, 1978, and thereafter, Respondent distributed a fourth handbill at the two Delta facilities, one side of which reads as follows:

As members of the public and in order to protect the wages and conditions of Local 399 members and to publicize our primary dispute with the Statewide Building Maintenance Company, we wish to call to the attention of the consuming public certain information about Delta Airlines from the official records of the Civil Aeronautics Board of the United States Government.

Let's look at the accident record.

Date	Location	Plane	Damage	Death/Injuries
5/27/76	Atlanta, Ga.	DC 8	none	yes
3/3/76	Springfield, Mo.	Boeing 727	none	yes
2/22/76	Tampa, Fla.	Boeing 727	none	yes
9/22/75	Texico Vortac, Tex.	DC 8	none	yes
8/8/75	Wilmington, Del.	DC 8	none	yes
11/25/74	Flushing, N.Y.	Boeing 727	substantial	yes
11/6/74	Detroit, Mich.	DC 8	none	yes
7/3/74	Atlanta, Ga.	Lockheed 1011	minor	yes
7/27/74	Fort Myers, Fla.	DC 8	none	yes
2/21/74	Pontiac, Ill.	DC 9	none	yes
2/15/74	Alexandria, La.	DC 9	none	yes
12/21/73	Lebanon, N.H.	DC 9	none	yes
11/27/73	Chattanooga, Tenn.	DC 9	destroyed	yes
8/20/73	Belle Glade, Fla.	DC 8	none	yes
7/31/73	Boston, Mass.	DC 9	destroyed	yes
4/1/73	New York-Atlanta	DC 9	none	yes
2/28/73	Las Vegas, Nev.	DC 8	none	yes
9/28/73	Chicago, Ill.	DC 9	substantial	yes
7/22/72	Knoxville, Tenn.	Convair 880	none	yes
9/30/72	Norfolk, Va.	Boeing 727	minor	yes
2/26/72	Alma, Ga.	DC 8	none	yes
12/20/72	Chicago, Ill.	Convair 880	substantial	yes
3/28/72	Little Rock, Ark.	Convair 880	none	yes
3/19/72	Atlanta, Ga.	DC 9	substantial	yes
5/30/72	Ft. Worth, Tex.	DC 9	destroyed	yes
8/18/71	Savannah, Ga.	DC 9	substantial	yes
8/5/71	Spartanburg, S.C.	Convair 880	none	yes
10/9/71	Chicago, Ill.	DC 9	minor	yes
9/17/69	Dallas, Tex.	DC 8	substantial	yes
8/2/69	Atlanta, Ga.	DC 8	none	yes
5/8/69	Chicago, Ill.	DC 8	substantial	yes
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6/10/69	Macon, Ga.	Convair 440	substantial	yes
7/22/69	Evergreen, Ala.	DC 8	none	yes
1/31/69	Jacksonville, Fla.	DC 8	substantial	yes
3/16/69	Pulaski, Va.	DC 8	none	yes
6/30/68	Memphis, Tenn.	Convair 340	substantial	yes
3/20/68	Evansville, Ind.	Convair 440	substantial	yes
2/15/68	Chattanooga, Tenn.	DC 6	substantial	yes
4/15/67	Milwaukee, Wis.	Convair 440	substantial	yes
9/19/67	Banning, Ca.	DC 8	none	yes
6/24/67	Newark, N.J.	Convair 850	substantial	yes
3/7/67	Memphis, Tenn.	Lockheed 362	none	yes
3/30/67	Kenner, La.	DC 8	destroyed	yes

Date	*Location*	*Plane*	*Damage*	*Death/Injuries*
2/27/66	New Orleans, La.	DC 8	substantial	yes
3/4/66	Chicago, Ill.	DC 9	none	yes
3/3/66	Birmingham, Ala.	DC 6	substantial	yes
11/24/64	Baton Rouge, La.	C 46	substantial	yes
3/26/64	Tampa, Fla.	Convair 880	minor	yes
11/1/63	Atlanta, Ga.	Convair 440	substantial	yes
8/13/63	Indianapolis, Ind.	DC 6	substantial	yes
1/14/63	Tampa, Fla.	DC 8	substantial	yes
1/13/63	Memphis, Tenn.	DC 7	substantial	yes

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There is also reference in the handbill to other anti-Delta statements. It may be noted that this handbilling of Delta has occurred from Monday through Friday of the workweek, approximately between the hours of 8:30 a.m. to 4:30 p.m.

On July 7, 1978, the Board granted a motion approving the stipulation, waiving a hearing before an administrative law judge and ordered the matter transferred to itself. However, on March 13, 1979, over 8 months later, the Board reversed itself and remanded the matter to the Regional Director for a hearing on all issues. Thereafter, Delta, on March 22, 1979, filed a motion received on March 26, urging the Board to reconsider its foregoing action pointing out *inter alia* that the remand order failed to state any reason for taking such action, *sua sponte*. On June 8, 1979, in an order signed by the Associate Executive Secretary of the Board, the Board denied the motion for reconsideration on the basis that it contained nothing not previously considered by the Board.[1]

At the hearing before me on July 11, 1979, the parties all agreed to an addendum to the stipulation of facts described above, which in essence added little to the foregoing.

No oral evidence was proffered by the parties on this occasion. The issue thus is, as indicated by the General Counsel, whether the handbilling to the extent indicated is violative of the second proviso to Section 8(b)(4) of the Act in that it in effect is untruthful. All parties agreed before me that there is no factual conflict herein. As will appear, a decision must be made as to whether we are talking about truthfulness in a technical or another sense.

C. *Conclusions*

Perhaps, as a starting point it is in order to point out that the Supreme Court has held that leafleting on private shopping center property, which did not relate to any purpose contemplated by the center, was not protected by the first amendment. *Lloyd Corp., Ltd.* v. *Tanner*, 407 U.S. 551 (1972). The General Counsel has so urged here, citing *International Brotherhood of Electrical Workers [Giorgi Construction Co.]* v. *N.L.R.B.*, 341 U.S. 694 (1961), and *American Federation of Television and Radio Artists, etc. (Great Western Broadcasting Corporation d/b/a KXTV)*, 150 NLRB 467, 472 (1964).

In a different context, the Board has recently pointed out in *United Steel Workers of America, AFL-CIO-CLC (Pet Incorporated)*, 244 NLRB 96 (1979), that various employees may not be strangers to each other in terms of Section 8(b)(4). It there noted, however, that a consumer boycott falls outside the protection of the publicity proviso if it is untruthful.[2] This leaves for treatment the present issue.

In *Pet*, the Board relied on *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Milk Drivers and Dairy Employees, Local 537 (Jack M. Lohman, d/b/a Lohman Sales Company)*, 132 NLRB 901 (1961). The Board there agreed with me that a handbiller is not an insurer that the content of a handbill is 100 percent correct, and that these handbills "truthfully" advised the public of the issue. I deem the situation here to be otherwise. For example, in *Local 732 (Servair Maintenance)*, 229 NLRB 392 (1977), the Board ambiguously lumped picketing and handbilling together and found the publicity unlawful.

The Board has held that essential elements of the *Jefferson Standard* in cases involving the advocacy of a boycott of an employer's product are that (1) the boycott must be tied to a coexisting labor dispute, and (2) must not consititute public discouragement of an employer's

[1] In a footnote, Member Murphy stated that she would "grant the motion to the extent of informing the parties that the stipulation does not include all necessary information as to all issues submitted to the Board, including but not limited to issues raised by the charging party in its brief which are outside the stipulation." There is no indication in the order whether this was issued by a panel or by the full Board.

[2] I note that in *Pet* the parties stipulated, unlike the instant case, that the advertisements and handbills were neither "misleading nor untruthful."

products. *The Firestone Tire and Rubber Co., Inc.*, 238 NLRB 1323 (1978), and *Coor's Container Company*, 235 NLRB 1312 (1978). The *Jefferson Standard* concept is manifestly based on the rationale that statements in the publications such as those under consideration herein were so vitriolic or offensive in their content so as to fall afoul of the truthfulness concept.

As the Court stated:

> The handbill diverted attention from the labor controversy. It attacked public policies of the company which had no discernible relation to that controversy. The only connection between the handbill and the labor controversy was an ultimate and undisclosed purpose or motive on the part of some of the sponsors that, by the hoped for financial pressure, the attack might extract from the company some future concession. A disclosure of that motive might have lost more public support for the employees than it would have gained, for it would have given the handbill more the character of coercion than of collective bargaining. [346 U.S. 464, 476–477.]

It hardly needs stating that there has been a plethora of major air crashes in recent years and particularly a larger number of fatalities involved due to the larger size of the aircraft.[3]

I cannot, therefore, view this as technical truthful publicity. The mode of the publicity was deliberately chosen by Respondent and the reasonable highly coercive effect thereof perforce intended.[4]

And as for placing this publicity in union magazines or publications this is a forum that Respondent chose to deliberately utilize and the same results necessarily follow.

I find, therefore, that Respondent in essence has engaged in conduct violative of Section 8(b)(4)(ii)(B) of the Act by distributing the handbills as quoted above and printing them in the above-named publications, and that this conduct was not protected by the second proviso of Section 8(b)(4) of the Act.

CONCLUSIONS OF LAW

1. Statewide Maintenance Corporation and Delta Air Lines, Inc., are persons engaged in commerce or in an industry affecting commerce within the meaning Section 2(1), (6), and (7), and Section 8(b)(4) of the Act.

2. Hospital and Service Employees Union, Service Employees International Union, AFL-CIO, Local 399, is a labor organization within the meaning of Section 2(5) of the Act.

3. By handbilling the terminal and ticket offices of Delta with handbills misleadingly unrelated to any dispute with Delta, and therefore technically untruthful with an object of forcing Delta to cease doing business with Statewide, Respondent Union has engaged in unfair labor practices within the meaning of Section 8(b)(4)(ii)(B) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[3] This is not to minimize the crash of a plane with a single passenger.

[4] The press has recently been full of stories of cancellations of travel on flights after the recent Chicago catastrophe.

THE REMEDY

Having found that Respondent Union has engaged in unfair labor practices in violation of Section 8(b)(4)(ii)(B) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action deemed necessary to effectuate the policies of the Act.

[Recommended Order omitted from publication.]